IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9317 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOLANKI HARENDRABHAI SHANKERBHAI

Versus

G E B

Appearance:

1. Special Civil Application No. 9317 of 2000

MS SADHANA SAGAR for Petitioner No. 1

RULE NOT RECD BACK for Respondent No. 1

RULE SERVED for Respondent No. 2

MR SP HASURKAR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/03/2004

ORAL JUDGEMENT

In this petition the grievance of the petitioner

is that despite having been appointed as part time sweeper since 23rd August, 1977, his service has not been regularized.

1.1. It appears that the petitioner was appointed as part time Sweeper on 23rd August, 1977. Initially he was required to work for three hours on fixed salary of Rs.112=50 per month. He was, thereafter made permanent part time sweeper with effect from 17th February, 1979. The petitioner made several attempts to his superior officers for regularization of his service, but did not get any response from them. The Secretary of the petitioner's Workers Union vide letter dated 12th January, 1988, recommended the case of the petitioner for regularization. It was, thereafter followed by local notice dated 20th June, 1988. However, respondent no. 2 vide its letter dated 19th February, 1997 intimated the petitioner that there was no vacancy on which he could be accommodated. Respondent no. 3, however on 30th June, 1997, recommended the case of the petitioner for regularization to respondent no. 2, but it was not accepted by respondent no. 2. It is stated at the bar that he has been required to work for more than three hours in a day that is upto six hours.

1.2. The respondents have resisted this petition by filing affidavit-in-reply. It is the say of the respondents that post was of part time basis where the petitioner was required to work for more than three hours and not for six hours. However, in view of the fact that the petitioner had been working since 23rd August, 1977, and he has been rendering satisfactory service, his case deserves consideration for regularization.

3. The question regarding regularization of service on temporary or part time employee who has put in number of years of service has been considered and decided by this Court on 17th February, 2004 in Special Civil Application No. 10518 of 1998, which was filed against the present respondent - Board. In view of the said judgment, the present petition is required to be allowed since the issue involved in it stands squarely covered by the decision in the aforesaid matters and it is hereby ordered to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, the petitioner shall be appointed on the same in accordance with his claim, in

the matter of seniority and the Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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